

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

ORIGINAL

United States District Court		District Eastern Dist. New York	
Name: Stephen Caracappa		Docket or Case No.:	
Place of Confinement: USP Coleman, Penn-2		Prisoner No.: 04597-748	
UNITED STATES OF AMERICA		Movant (include name under which convicted) Stephen Caracappa	
v.			

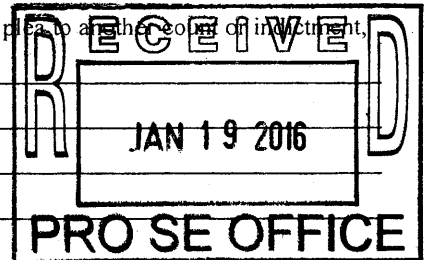
MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: U.S. District Court for the Eastern District of New York
- (b) Criminal docket or case number (if you know): 05-CR-192 (JBW)
- (a) Date of the judgment of conviction (if you know): April 2006
- (b) Date of sentencing: 2008, After Judgment of acquittal was overturned
- Length of sentence: Life plus 80 years
- Nature of crime (all counts): Racketeering conspiracy (RICO) 18 U.S.C. § 1962(d).
Possession with the intent to distribute a controlled substance, 21
U.S.C. § 841(a)(1) and 846.
- (a) What was your plea? (Check one)
 - Not guilty ☒
 - Guilty ☐
 - Nolo contendere (no contest) ☐
- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

- If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐
- Did you testify at either a pretrial hearing, trial or post-trial hearing?

Yes ☐ No ☒



8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) Name of court: Second Circuit

(b) Docket or case number (if you know): 06-3280-CR(L)/09-1177-CR(L)

(c) Result: 1st appeal overturned/second appeal affirmed.

(d) Date of result (if you know): 1st-2008, 2nd-2010

(e) Citation to the case (if you know): 543 F.3d 25 (2nd Cir 2008)/614 F.3d 36 (2nd Cir 2010)

(f) Grounds raised: Government cross appealed judgment of acquittal based on statute of limitation, / 2nd appeal (1) prosecutorial error in rebuttal summation, (2) violation of Rule 801(d)(1)(B), (3) violation of Rule 611(b), (4) imposed excessive sentence, (5) legally insufficient evidence.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: Cert. Denied.

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know):

(5) Grounds raised: Same as Direct Appeal

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Eastern District of New York

(2) Docket or case number (if you know): 11-CV-4921 (JBW)

(3) Date of filing (if you know):

(4) Nature of the proceeding: 28 U.S.C. § 2255

(5) Grounds raised: Brady violation and conflict of interest with
co-defendants defense counsel.

(6) Did you receive a hearing where evidence was given on your motion, petition, application?

Yes ☐ No ☒

(7) Result: Denial on all grounds

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: 2nd Circuit Court of Appeals

(2) Docket or case number (if you know): 06-3280-CR (L)

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: Recall the mandate

(5) Grounds raised: Erroneous jury instruction that extended the life of
the RICO Conspiracy by ten (10) years that would have affected
the jury judgment in determining the statute of limitation issue.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Dismissal

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Newly discovered facts that prove actual innocence.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The District Court gave erroneous jury instruction that extended the life of the New York overt act by ten (10) years past what it was charged in the indictment that adversely affected the jury's ability in deciding the statute of limitation defense.

See Memorandum of Law.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: This Court grant a

judgment of acquittal based on the statute of limitation which was subsequently overturned by the 2nd Circuit.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Recall the mandate

Name and location of the court where the motion or petition was filed: 2nd Circuit Court of Appeals.

Docket or case number (if you know): _____

Date of the court's decision: Dismissal

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: U.S. Supreme Court

Docket or case number (if you know): 15-5388

Date of the court's decision: October 5, 2015

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Same issue in a 28 U.S.C. § 2244 motion before the 2nd Circuit.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: Edward Hayes, 515 Madison Ave.
New York, New York 10022

(c) At trial: same as (b) above

(d) At sentencing: same as (b) above

(e) On appeal: Daniel Nobel, 401 Broadway, 75th Floor
New York, New York 10013

(f) In any post-conviction proceeding: Zoe Dolan, 154 Ground Street
New York, New York 10013

(g) On appeal from any ruling against you in a post-conviction proceeding: same as (f) above

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion has been filed under (F)(4) section to the § 2255 statute. Further this issue has also been simultaneously filed under newly discovered evidence that proves actual innocence pursuant to 28 U.S.C. § 2244, requesting authorization to file a second or successive § 2255 motion. However, as prescribed in this motion, this Court hear the instant Petitioner under one of the alternative presented within this motion such as a 28 U.S.C. 2241, or under the All Writs Act.

See Memorandum of Law.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

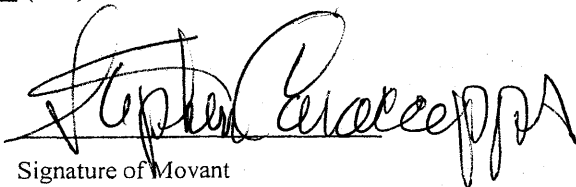
Therefore, movant asks that the Court grant the following relief: Vacate conviction to the
RICO Conspiracy based on the statute of limitation defense.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on January, 12
2016 (month, date, year).

Executed (signed) on January 12, 2016 (date).


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this
motion. _____

